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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

No. [redacted] 47

ERIE RAILROAD COMPANY,

Appellant,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, THE STATE OF NEW JERSEY, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellees.

On Appeal from the United States District Court for the District of New Jersey

STATEMENT AS TO JURISDICTION

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Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

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New York Central Railroad Company Ferry Abandonment, 295 I.C.C. 385 (1957) 10, 14fn

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Statutes Cited

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On Appeal from the United States District Court for the District of New Jersey

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Statement as to Jurisdiction

Appellant* Erie appeals from the final decree of the

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* Throughout this Statement as to Jurisdiction we will refer to Erie Railroad Company as "Erie"; New York Susquehanna & Western Railroad Company as "Susquehanna"; United States of America as "United States"; Interstate Commerce Commission as "Commission"; State of New Jersey as "State"; Board of Public Utility Commissioners of New Jersey as "Board"; Brotherhood of Locomotive Engineers as "Brotherhood"; United States Court for the District of New Jersey as "District Court"; Trustee for New Jersey and New York Railroad Company as "Trustee"; Delaware, Lackawanna & Western Railroad Company as "Lackawanna" and New York Central Railroad Company as "Central".